

2013 DRAFTING REQUEST

Bill

Received: 1/4/2013	Received By: chanaman
Wanted: As time permits	Same as LRB:
For: Administration-Budget	By/Representing: Bong
May Contact:	Drafter: chanaman
Subject: State Govt - procurement	Addl. Drafters:
	Extra Copies:

Submit via email: **YES**
Requester's email:
Carbon copy (CC) to:

Pre Topic:

DOA:.....Bong, BB0313 -

Topic:

Adopt single prime contracting as the default method of contracting for services

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 1/7/2013	scalvin 1/9/2013		_____			
/P1	chanaman 2/2/2013	wjackson 2/3/2013	phenry 2/4/2013	_____	sbasford 1/9/2013		
/P2	chanaman 2/6/2013	jdye 2/6/2013	jmurphy 2/6/2013	_____	srose 2/4/2013		
/P3	chanaman	kfollett	rschluet	_____	sbasford		

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	2/8/2013	2/8/2013	2/8/2013	_____	2/6/2013		
/P4	chanaman	scalvin	jmurphy	_____	lparisi		
	2/8/2013	2/8/2013	2/8/2013	_____	2/8/2013		
/P5				_____	mbarman		
				_____	2/11/2013		

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	2/8/2013	2/8/2013	2/8/2013	_____	2/6/2013		

/P4

1P5 sac

02/08/2013

Jim
2/8/13

Jim + PH
2/8/13

lparisi

2/8/2013

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/P3					sbasford		

Handwritten notes:
1/4/13 JF
2/8/13 JF
2/8/13 JF

Vers. Drafted

Reviewed

Typed

Proofed

Submitted

Jacketed

Required

2/6/2013

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/P2				_____	srose 2/4/2013		

P3 2/6/13
Jan 2/6/13
Just 2/6/13

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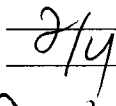
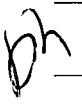
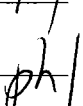
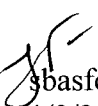
Topic:

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See attached

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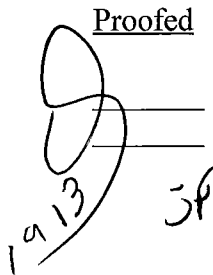
Topic:

Adopt single-prime contracting as the default method of contracting for services.

Instructions:

See attached

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1/?	chanaman	/Pl sac 01/08/13	/Pl sac 01/09/13				

FE Sent For:

<END>

Hanaman, Cathlene

From: SashaE.Bong@wisconsin.gov
Sent: Monday, December 17, 2012 4:20 PM
To: Hanaman, Cathlene
Cc: Thornton, Scott - DOA; Kraus, Jennifer - DOA; Bong, Sasha E - DOA
Subject: Statutory Language Drafting Request - BB0313
Attachments: Single Prime language.pdf

Biennial Budget: 2013-15

Topic: Single-Prime Contracting

Tracking Code: BB0313

SBO Team: GGCF

SBO Analyst: Bong, Sasha - DOA
Phone: (608) 266-5468
E-mail: SashaE.Bong@wisconsin.gov

Agency Acronym: DOA

Agency Number: 505

Priority: Medium

Intent:

Modify s. 16.855 to adopt single-prime contracting as the default method of state contracting.

Please see the attached document.

Attachments: True

Please send completed drafts to statlanguage@wisapps.wi.gov

Section 1. 16.855(1n) of the statutes is created to read:

(1n) In this section:

✓ (a) "Lowest bidder" means the bidder whose bid contains the lowest total dollar amount when compared with other bids submitted for the same work. Should the specifications require evaluation of other factors in conjunction with lowest dollar amount to determine the lowest bidder, a formula shall be specified which will permit the conversion of evaluation factors to a dollar value.

Subcontractors

✓ (b) "MEP subcontractors" are those contractors who perform mechanical, electrical, plumbing or fire protection work and enter into a subcontract with a general prime contractor for the performance of their respective division of work.

(c) A "qualified bidder" is one who meets the following conditions: *under*

✓ 1. Has completed one or more projects of at least 50% of the size or value of the division of work being bid and the type of work completed is similar to that being bid. If a greater magnitude of experience is deemed necessary, other than size or value of the work, such requirements will be described in the specifications.

✓ 2. Has access to all necessary equipment and has organizational capacity and technical competence necessary to enable performance of the work properly and expeditiously.

3. Consideration will be given to associations consisting of 2 or more contracting firms organized for the purpose of entering into a construction contract as a single entity, providing the assignment of and provisions for continuity of the various responsibilities within the association are agreed upon prior to award of contract and further providing that either of the individual firms constituting the association is qualified as defined herein.

✓ 4. In the event that the project is of such magnitude as to limit competition as a result of the conditions established for qualification, the department may waive the condition for bidder qualification.

5. The department may require bidders to submit sworn statements as to financial ability, equipment and experience in construction and require other such information as may be necessary to determine their competency. Bidders failing to submit required sworn statements shall be deemed not qualified.

Not conditions

current (a)

Subcontractors

(d) A "responsible bidder" is one who meets the following conditions:

1. Maintains a permanent place of business.

- ✓ 2. Provides a sworn statement upon request, which evidences the bidder has adequate financial resources to complete the work being bid, as well as all other work the bidder is presently under contract to complete.
- ✓ 3. Is bondable for the terms of the proposed contract.
- ✓ 4. Has a record of satisfactorily completing past projects. Criteria which will be considered in determining satisfactory completion of projects by contractors and subcontractors will include:
- a. Completed contracts in accordance with drawings and specifications.
 - b. Diligently pursued execution of the work and completed contracts according to the established time schedule unless extensions are granted by the owner.
 - c. Fulfilled guarantee requirements of the contract documents.
 - d. Established and diligently maintained a satisfactory affirmative action program in accordance with the contract provisions.
 - e. Established and diligently maintained a satisfactory safety program in accordance with the contract provisions.
- ✓ 5. Is not presently on an ineligible list maintained by the department for noncompliance with equal employment opportunities and affirmative action requirements as provided for in s. 16.765(9), or on any other agency list for construction related violation of statutes or administrative rules.

NOTES: In adopting single-prime bidding and contracting as the default method of state contracting, new definitions must be introduced into state law. These definitions are based on the definitions that have been promulgated in the Wisconsin Administrative Code by DOA.

Section 2. 16.855(9) of the statutes is repealed and recreated to read:

(9) Contractor Prequalification.

- (a) The department shall develop and administer a registration and certification process for all contractors submitting bids on any construction project under this section.
- (b) Prior to any contractor bidding, selection or identification by the department, any contractor doing work on a state project must be registered and certified by the department as a responsible bidder and a qualified bidder. All certifications shall be valid for a two-year period from the date of issuance.

(c) In order to be certified by the department, a contractor shall meet the following conditions:

1. has been in business for at least 12 months;
2. is a legal entity and legally authorized to do business in Wisconsin;
3. has performed at least one other public project for a government entity;
4. can provide information, on request, to the department on ownership, management and control;
5. can obtain a combined performance/payment bond;
6. has not been debarred from any government contracts in any jurisdiction nor faced professional license discipline or tax evasion during the previous 10 years;
7. has demonstrated experience, expertise and knowledge to operate as a particular type of contractor and meets the requirements necessary to be both a qualified bidder and responsible bidder;
8. has access to all necessary equipment and has organizational capacity and technical competence necessary to enable performance of work properly and expeditiously;
9. provides a sworn statement on request which evidences the contractor has adequate financial resources to complete the work being bid, as well as all other work that the contractor is presently under contract to complete; and,
10. can provide any other information necessary for the department to determine competency.

responsible

(d) The department shall certify a contractor in a timely manner from the date on which a complete application for certification is received.

(e) The department may decertify a contractor for failure to perform on a state contract, another public contract in Wisconsin or with notice to the department that a contractor no longer meets the certification requirements. The department shall develop a decertification process by administrative rule that provides for adequate due process to the contractor, including notice, hearing and appeal rights for the contractor.

NOTES: Prior to participating in any bidding process, all general and MEP contractors will be required to be registered with and certified by DOA as responsible and qualified bidders. These standards are based on criteria used for prequalification in other states as well as the standards promulgated in the Wisconsin Administrative Code by DOA.

Section 3. 16.855(13) of the statutes is repealed and recreated to read:

(13) MEP Subcontractor Identification and Selection.

(a) In any construction project let under single-prime bidding and contracting, the department shall first identify and select any necessary MEP subcontractors who shall be included as part of a general prime contractor's bid to the department under s. 16.855(14). Unless an MEP subcontractor has been decertified by the department, the lowest bidding general prime contractor shall then enter into contracts with these identified and selected MEP subcontractors as required under s. 16.855(14)(e).

(b) The department shall develop and administer an open and public bidding process for the identification and selection of MEP subcontractors. To provide notice and ensure adequate competition in the identification and selection of MEP subcontractors, the department shall follow the requirements and procedures set forth in s. 16.855(2).

(c) Within 48 hours after submission, the bid tabs identifying the names of MEP subcontractors who bid and their amounts of the bid shall be publicly available on the department's website and, in the event that they are unavailable on the department's website, at the department's offices. Within seven days after the submission deadline, public notice shall be made identifying which MEP subcontractors have been identified by the department as the lowest bidders.

(d) Any bid documents submitted by an MEP subcontractor identified and selected by the department as the lowest qualified responsible bidder shall be subject to public inspection. Any bid documents submitted by an unsuccessful MEP subcontractor bidder shall not be publicly disclosed.

(e) The procedures set forth in this subsection for the identification and selection of MEP subcontractors shall be used by the department when the building commission approves an alternative delivery method under s. 13.48(19).

NOTES: All MEP contractors would be required to be identified and selected through an open and public bidding process developed and administered by DOA and modeled on current law.

Section 4. 16.855(14) of the statutes is repealed and recreated to read:

(14) Single-Prime Contracting.

(a) Unless an alternative delivery method is approved by the building commission under s. 13.48(19), the department shall let all construction projects that exceed \$185,000 through single-prime bidding and contracting.

(b) Once any necessary MEP subcontractors are identified under s. 16.855(13)(c), the department shall make available on the department's website and, in the event that they are unavailable on the department's website, at the department's offices a copy of all of the selected MEP subcontractors bid documents.

(c) Seven days after the identification of the lowest qualified responsible MEP subcontractors by the department, general prime contractors shall submit their bids to the department. Within 30 days of the department's deadline for receiving bids from general prime contractors, the department shall notify a general prime contractor of its selection for a contract offer.

(d) A general prime contractor shall submit a bid to the department using the bids of the MEP subcontractors that have been identified and selected by the department as a lowest qualified responsible bidder under s. 16.855(13). A bid submitted by a general prime contractor that includes an MEP subcontractor(s) other than one(s) identified by the department as the lowest qualified responsible bidder shall not be accepted.

(e) Except as provided in sub. (10m) (am), the department shall award all contracts to the lowest qualified responsible bidder that result in the lowest total construction cost for the project. Provided that an MEP subcontractor has not been decertified by the department, the general prime contractor who is the lowest qualified responsible bidder and selected by the state shall then enter into contracts with the MEP subcontractors identified and selected by the department and that the general prime contractor included as part of its bid. The final bid results shall be made publicly available on the department's website concurrent to issuance of the notice to proceed to the general prime contractor.

NOTES: Single-prime bidding and contracting will become the default delivery method for state building projects that exceed \$185,000. DOA would oversee the MEP contractor bidding process to identify subcontractors for the general contractor. Once winning MEP contractors are identified and selected, the general contractor – not DOA – would contract and work directly with the selected subcontractors.

Section 5. 16.855(14n) of the statutes is created to read:

(14n) Single-Prime Subcontracting With MEP Subcontractors.

(a) The department shall develop a standard form contract to be used by any general prime contractor working with an MEP subcontractor on a construction project under this section. To ensure that ample input is received from all contractors, the department shall provide public notice, accept written comments, allow for testimony and hold at least one public hearing on the development of a standard form contract. Any standard form contract developed by the department must be reviewed and approved by the building commission after the department has considered any written comments and held its required public hearing.

(b) A standard form contract developed by the department shall include:

1. A requirement that an MEP subcontractor provide a separate 100% performance bond and a separate 100% payment bond to the benefit of the general prime contractor as the sole named obligee.
2. A clear delineation of MEP subcontractor responsibilities, insurance requirements, indemnification obligations, claims process, and termination rights and protections.
3. A requirements that a general prime contractor abides by Wisconsin's Prompt Payment Law under s. 16.528 in the timing of the general prime contractor's payments to an MEP subcontractor.
4. A schedule for payment so that as work progresses, the general prime contractor shall pay to the MEP subcontractor an amount equal to the proportionate value of the MEP subcontractor's work, less retainage.

(c) A standard form contract shall not be amended by either the general prime contractor or the MEP subcontractor.

(d) When the building commission approves an alternative delivery method under s. 13.48(19), a contractor shall use the standard form contract when working with any MEP subcontractors.

NOTES: A successful bidding general contractor would enter into contractual relationships with each of the MEP contractors using a standard form contract developed by DOA, containing the terms and conditions approved by DOA and the Building Commission after receiving industry input.

Section 6. 16.855(19) of the statutes is renumbered 16.855(19)(a) and amended to read:

(19) (a) As the work progresses under any contract for construction of a project the department, from time to time, shall grant to the contractor an estimate of the amount and proportionate value of the work done, which shall entitle the contractor to receive the amount thereof, less the retainage, from the proper fund. The retainage shall be an amount equal to not more than 5% of the estimate until 50% of the work has been completed. At 50% completion, no additional amounts shall be retained, and partial payments shall be made in full to the contractor unless the department architect or engineer certifies that the job is not proceeding satisfactorily. At 50% completion or any time thereafter when the progress of the work is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than 10% of the value of the work completed. Upon substantial completion of the work, an any amount retained may shall be paid to the contractor, less the value of any required corrective work or uncompleted work. For the purposes of this section, estimates may include any fabricated or manufactured materials and components specified, previously paid for by contractor and delivered to the work or properly stored and suitable for incorporation in the work embraced in the contract. ~~This subsection does not apply to contracts awarded under s. 16.858.~~

NOTES: Retainage amounts by DOA would be maintained similar to as provided under current state law.

Section 7. 16.855(19)(b) and (c) of the statutes are created to read:

(b) As the work progresses under any subcontract for construction of a project, the general prime contractor shall, upon request of a subcontractor, pay to the subcontractor an amount equal to proportionate value of the subcontractor's work done, less retainage. The retainage shall be an amount equal to not more than 5 percent of the value of subcontractor's work completed until 50 percent of the subcontractor's work has been completed. At 50 percent completion, no additional amounts shall be retained, and partial payments shall be made in full to the subcontractor unless the department certifies that the subcontractor's work is not proceeding satisfactorily. At 50 percent completion or any time thereafter when the progress of the subcontractor's work is not satisfactory, additional amounts may be retained with the approval of the department but in no event shall the total retainage be more than 10 percent of the value of subcontractor's work completed. Upon substantial completion of the subcontractor's work, any amount retained shall be paid to the subcontractor, less the value of any required corrective work or uncompleted work. All payments under this paragraph made by a general prime contractor to subcontractors for work performed shall be made within 7 calendar days after the date on which the general prime contractor receives payment from the department for the work performed.

(c) This subsection does not apply to contracts awarded under s. 16.858.

NOTES: Retainage amounts by the general contractor of amounts owed to MEP contractors would be maintained similar to that as required under current state law.

Section 8. Initial applicability.

The treatment of sections 16.855(9), (13) and (14) of the statutes, the creation of section 16.855(14n) of the statutes, the renumbering and amendment of section 16.855(19) of the statutes, and the creation of sections 16.855(1n) and 16.855(19)(b) and (c) of the statutes first apply with respect to projects for which bids and proposals are solicited on or after January 1, 2014.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1022/2

CMH:~)....

sec

DOA:.....Bong, BB0313 - Adopt single prime contracting as the default method of contracting for services

FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

STATE PROCUREMENT

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 13.48 (19)^x of the statutes is amended to read:

3 13.48 (19) ALTERNATIVES TO STATE CONSTRUCTION. Whenever the building
4 commission determines that the use of innovative types of design and construction
5 processes will make better use of the resources and technology available in the
6 building industry, the building commission may waive any or all of s. 16.855, except

1 s. 16.855 (13) and (14m), if such action is in the best interest of the state and if the
2 waiver is accomplished through formal action of the building commission. The
3 building commission may authorize the lease, lease purchase or acquisition of such
4 facilities constructed in the manner authorized by the building commission. Subject
5 to the requirements of s. 20.924 (1) (i), the building commission may also authorize
6 the lease, lease purchase or acquisition of existing facilities in lieu of state
7 construction of any project enumerated in the authorized state building program.

History: 1971 c. 125; 1973 c. 90; 1973 c. 243 s. 82; 1973 c. 335 s. 13; 1975 c. 39, 40, 198, 199; 1977 c. 26; 1977 c. 29 ss. 7, 8r, 1654 (8) (c); 1977 c. 325; 1977 c. 418 ss. 5, 5m, 924 (18) (c); 1979 c. 34, 221, 350; 1981 c. 341; 1983 a. 27 ss. 11 to 12n, 2202 (5); 1983 a. 36 ss. 18 to 20, 96 (3); 1983 a. 207; 1985 a. 29, 120; 1987 a. 27, 186, 395, 399; 1989 a. 31, 366; 1991 a. 39, 269, 315; 1993 a. 16, 288, 414; 1995 a. 27, 216, 225, 227; 1997 a. 5, 27, 35, 237; 1999 a. 9; 1999 a. 150 s. 672; 1999 a. 197; 2001 a. 16, 103; 2003 a. 33 ss. 25 to 26i, 9160; 2003 a. 91; 2005 a. 25, 253, 39; 2007 a. 20; 2009 a. 28, 185, 361; 2011 a. 7, 10, 32.

8 **SECTION 2.** 16.855 (1) of the statutes is renumbered 16.855 (1m) and amended

9 to read:

10 16.855 (1m) The department shall let by contract to the lowest qualified
11 responsible bidder who is a responsible bidder and a qualified bidder all construction
12 work when the estimated construction cost of the project exceeds \$50,000, except for
13 construction work authorized under s. 16.858 and except as provided in sub. (1r) or
14 (10m) or s. 13.48 (19). If factors other than dollar amounts are required to be
15 evaluated for a project, the department shall specify a formula that will convert the
16 other factors into a dollar value for comparison.

17 **(1r)** If a bidder is not a Wisconsin firm and the department determines that the
18 state, foreign nation or subdivision thereof in which the bidder is domiciled grants
19 a preference to bidders domiciled in that state, nation or subdivision in making
20 governmental purchases, the department shall give a preference over that bidder to
21 Wisconsin firms, if any, when awarding the contract, in the absence of compelling
22 reasons to the contrary. The department may enter into agreements with states,

1 foreign nations and subdivisions thereof for the purpose of implementing this
2 subsection.

History: 1971 c. 125; 1973 c. 47; 1975 c. 39, 199, 390; 1977 c. 418; 1979 c. 34; 1981 c. 20; 1983 a. 27 ss. 104g to 105, 2202 (1); 1983 a. 390 s. 6; 1985 a. 29; 1985 a. 332 s. 251 (1); 1987 a. 27, 292; 1989 a. 31; 1991 a. 39, 316; 1995 a. 27 ss. 400p, 9126 (19); 1995 a. 227; 1997 a. 27, 306; 1999 a. 150 s. 672; 1999 a. 197; 2001 a. 103; 2003 a. 33, 157; 2005 a. 141, 391; 2007 a. 20 s. 9121 (6) (a); 2009 a. 299; 2011 a. 32; 2011 a. 260 s. 80.

3 **SECTION 3.** 16.855 (1g) of the statutes is created to read:

4 16.855 (1g) In this section:

5 (a) "Mechanical, electrical, or plumbing subcontractor" is a contractor that
6 performs mechanical, electrical, plumbing, or fire protection work and enters into a
7 contract with a general prime contractor to perform their work.

8 (b) "Qualified bidder" means a person that the department certifies under sub.

9 (9) (b) 1.

10 (c) "Responsible bidder" means a person that the department certifies under
11 sub. (9) (b) 2.

12 (d) "Single prime contracting" means contracting through a process in which
13 a design professional prepares plans and specifications for the project and the
14 department selects a single contractor to perform and be responsible for the project.

****NOTE: Is this definition accurate?

15 **SECTION 4.** 16.855 (2) (a) 5. of the statutes is amended to read:

16 16.855 (2) (a) 5. Date, when and place where plans will be available.

History: 1971 c. 125; 1973 c. 47; 1975 c. 39, 199, 390; 1977 c. 418; 1979 c. 34; 1981 c. 20; 1983 a. 27 ss. 104g to 105, 2202 (1); 1983 a. 390 s. 6; 1985 a. 29; 1985 a. 332 s. 251 (1); 1987 a. 27, 292; 1989 a. 31; 1991 a. 39, 316; 1995 a. 27 ss. 400p, 9126 (19); 1995 a. 227; 1997 a. 27, 306; 1999 a. 150 s. 672; 1999 a. 197; 2001 a. 103; 2003 a. 33, 157; 2005 a. 141, 391; 2007 a. 20 s. 9121 (6) (a); 2009 a. 299; 2011 a. 32; 2011 a. 260 s. 80.

17 **SECTION 5.** 16.855 (2) (a) 6. of the statutes is created to read:

18 16.855 (2) (a) 6. That the department will consider only bids from persons who
19 are responsible bidders and, unless sub. (9m) (a) 2. applies, qualified bidders.

20 **SECTION 6.** 16.855 (9) of the statutes is renumbered 16.855 (9m) (b) 1. c. and
21 amended to read:

1 16.855 (9m) (b) 1. c. ~~The~~ If the department may ~~require bidders to submit so~~
2 requires, the person has submitted a sworn statements statement as to financial
3 ability, equipment, and experience in construction and ~~require such~~ other
4 information as may be necessary to determine ~~their~~ the person's competency.

History: 1971 c. 125; 1973 c. 47; 1975 c. 39, 199, 390; 1977 c. 418; 1979 c. 34; 1981 c. 20; 1983 a. 27 ss. 104g to 105, 2202 (1); 1983 a. 390 s. 6; 1985 a. 29; 1985 a. 332 s. 251 (1); 1987 a. 27, 292; 1989 a. 31; 1991 a. 39, 316; 1995 a. 27 ss. 400p, 9126 (19); 1995 a. 227; 1997 a. 27, 306; 1999 a. 150 s. 672; 1999 a. 197; 2001 a. 103; 2003 a. 33, 157; 2005 a. 141, 391; 2007 a. 20 s. 9121 (6) (a); 2009 a. 299; 2011 a. 32; 2011 a. 260 s. 80.

5 **SECTION 7.** 16.855 (9m) of the statutes is created to read:

6 16.855 (9m) (a) 1. The department shall certify persons as qualified bidders
7 under par. (b) 1. and responsible bidders under par. (b) 2. and shall administer a
8 registration process for all contractors submitting bids on any construction project
9 under this section. The department shall issue, in a timely manner, a certification
10 decision on a complete application for certification. A certification under this
11 subdivision is valid for 2 years except the department may decertify a person if the
12 department determines that the person no longer meets the qualifications under par.
13 (b) and if the department follows a decertification process developed by rule that
14 provides to the person notice, hearing, and a means to appeal.

15 2. Notwithstanding sub. (1m) or (14) ^e(a), the department may waive the
16 condition of certification as a qualified bidder if the project is of such magnitude as
17 to limit competition if the conditions under par. (b) 1. were required.

18 3. The department shall consider for certification under par. (b) associations
19 consisting of at least 2 contracting firms that are organized for the purpose of
20 entering into a construction contract as a single entity if at least one of the
21 contracting firms is qualified under par. (b) and if the assignment of, and provisions
22 for the continuity of, the various responsibilities within the association are agreed
23 upon before the contract is awarded.

1 (b) 1. To be certified as a qualified bidder, a person must meet all of the following
2 conditions:

3 a. The person has completed at least one project that involved similar work to
4 the work being bid and the project was at least 50 percent of the size or value of the
5 division of the project being bid. If the department determines that more experience
6 is necessary for a particular project, the department may include additional
7 requirements in the specifications and certify persons accordingly.

8 b. The person has access to all necessary equipment and the organizational
9 capacity and technical competence necessary to perform the project work properly
10 and expeditiously.

11 d. The person meets all conditions under subd. 3.

12 2. To be certified as a responsible bidder, a person must meet all of the following
13 conditions:

14 a. The person maintains a permanent place of business.

15 b. The person submits a sworn statement, upon the department's request, that
16 indicates that the person has adequate financial resources to complete the work
17 being bid.

18 c. The person is bondable for the term of the proposed contract.

19 d. The person has a record of satisfactorily completing projects. In determining
20 this factor, the department shall consider if the person has completed all contracts
21 in accordance with specifications; diligently pursued execution of the work and
22 completed contracts according to the time schedule, taking account of extensions
23 granted; fulfilled guarantee requirements of contracts; if the contract included an
24 affirmative action program requirement, complied with the requirement; and, if the
25 contract included a safety program requirement, complied with the requirement.

e. The person is not on an ineligible list that the department maintains under s. 16.705 (9) or 16.765 (9).

****NOTE: If there are other lists that an appearance on would disqualify the person from certification, they should be specifically listed.

~~f. The person meets all conditions under subd. 3.~~

3. To be certified under subd. 1. or 2., the person must meet all of the following conditions:

f. a. The person has been in business for at least 12 months.

g. b. The person is a legal entity and authorized to do business in Wisconsin.

h. c. The person has performed at least one other public project for a government entity.

d. The person can provide information, upon request, to the department on the person's ownership, management, and control.

e. In any jurisdiction, the person has not been debarred from any government contracts, has not faced discipline under a professional license, or has not been found to have committed tax avoidance or evasion.

SECTION 8. 16.855 (10m) (am) 3. of the statutes is amended to read:

16.855 (10m) (am) 3. The department may award any contract to a minority business or disabled veteran-owned business, or a business that is both a minority business and a disabled veteran-owned business, that if the business is a responsible bidder and a qualified bidder and the business submits a qualified responsible bid that is no more than 5 percent higher than the apparent low bid.

History: 1971 c. 125; 1973 c. 47; 1975 c. 39, 199, 390; 1977 c. 418; 1979 c. 34; 1981 c. 20; 1983 a. 27 ss. 104g to 105, 2202 (1); 1983 a. 390 s. 6; 1985 a. 29; 1985 a. 332 s. 251 (1); 1987 a. 27, 292; 1989 a. 31; 1991 a. 39, 316; 1995 a. 27 ss. 400p, 9126 (19); 1995 a. 227; 1997 a. 27, 306; 1999 a. 150 s. 672; 1999 a. 197; 2001 a. 103; 2003 a. 33, 157; 2005 a. 141, 391; 2007 a. 20 s. 9121 (6) (a); 2009 a. 299; 2011 a. 32; 2011 a. 260 s. 80.

SECTION 9. 16.855 (13) of the statutes is repealed and recreated to read:

16.855 (13) (a) In any project under this section let under single prime contracting, the department shall select, as provided under par. (b), necessary

**** Every bidder must be a "responsible bidder," so the requirements in f. to j. are not repeated in the criteria for a "qualified bidder."

**** I added f. to j. to "responsible bidder" instead of to both "responsible bidder" and "qualified bidder". One always has to be a "responsible bidder" so I think it should be read as "qualified bidder" otherwise.

1 mechanical, electrical, or plumbing subcontractors who are responsible bidders and
2 qualified bidders to be included as part of a general prime contractor's bid under sub.
3 (14).[✓]

4 (b) For purposes of selecting subcontractors under par. (a),[✓] the department
5 shall develop an open and public bidding process and follow the requirements and
6 procedures under sub. (2).[✓] Within 48 hours of bid submission, the department shall
7 make available on the department ~~Web~~^{e Internet} site the names of the bidders and the amount
8 of the bid. No more than 7 days after the deadline for bid submission, the department
9 shall provide public notice of the lowest bidders who are responsible bidders and
10 qualified bidders. The department shall make available on its ~~Web~~^{e Internet} site the bids,
11 including the bid documents, identified under this paragraph as the lowest bidders
12 and they shall be open to public inspection. No other bids may be on the ~~Web~~^e site or
13 open to public inspection.

14 **SECTION 10.** 16.855^X (14) (a) of the statutes is renumbered 16.855 (14) (e) and
15 amended to read:

16 16.855 (14) (e) ~~If a project requires prior approval of the building commission~~
17 ~~under s. 13.48 (10) (a) and bids are required to be solicited under sub. (2), the~~
18 ~~department shall take both single bids and separate bids on any division of the work~~
19 ~~that it designates. If a project does not require prior approval of the building~~
20 ~~commission under s. 13.48 (10) (a) and bids are required to be solicited under sub.~~
21 ~~(2), the department may take single bids or separate bids on any division of the work~~
22 ~~that it designates. If the department awards contracts by the division of work, the~~
23 ~~department shall award the contracts according to the division of work selected for~~
24 ~~bidding. Except as provided in sub. (10m) (am), the department shall award all~~
25 single prime contracts to the lowest bidder who is a qualified bidder and a responsible

bidder or bidders that result results in the lowest total construction cost for the project. The department shall make available on its ^{Internet} Web site the final bid results at the same time it issues the award notice to the successful bidder.

History: 1971 c. 125; 1973 c. 47; 1975 c. 39, 199, 390; 1977 c. 418; 1979 c. 34; 1981 c. 20; 1983 a. 27 ss. 104g to 105, 2202 (1); 1983 a. 390 s. 6; 1985 a. 29; 1985 a. 332 s. 251 (1); 1987 a. 27, 292; 1989 a. 31; 1991 a. 39, 316; 1995 a. 27 ss. 400p, 9126 (19); 1995 a. 227; 1997 a. 27, 306; 1999 a. 150 s. 672; 1999 a. 197; 2001 a. 103; 2003 a. 33, 157; 2005 a. 141, 391; 2007 a. 20 s. 9121 (6) (a); 2009 a. 299; 2011 a. 32; 2011 a. 260 s. 80.

SECTION 11. 16.855 (14) (am) of the statutes is created to read:

16.855 (14) (am) Except as provided in s. 13.48 (19), the department shall let all construction projects that exceed \$185,000 through single prime contracting.

SECTION 12. 16.855 (14) (b) of the statutes is repealed.

SECTION 13. 16.855 (14) (bm) of the statutes is created to read:

16.855 (14) (bm) If the bid is being let through single prime contracting, bidders for the single prime contractor who are qualified bidders and responsible bidders shall submit their bids to the department no later than 7 days after the successful bids become available to the public under sub. (13) (b). ^{Subcontractor}

SECTION 14. 16.855 (14) (c) of the statutes is created to read:

16.855 (14) (c) The department shall reject any bid from a single prime contractor who submits a bid that includes contractors other than the ones selected under sub. (13) (a).

SECTION 15. 16.855 (14) (d) of the statutes is created to read:

16.855 (14) (d) Within 30 days after the deadline under par. (bm), the department shall notify the successful single prime contractor bidder of its selection. The contractor who is awarded the contract shall enter into contracts with the mechanical, electrical, or plumbing subcontractors selected under par. (13) (a) and shall comply with the requirements under sub. (14m). The department shall make the final bid results available on its ^{Internet} Web site at the time it issues the notice to the successful bidder.

1 **SECTION 16.** 16.855 (14m) of the statutes is created to read:

2 16.855 (14m) (a) The department shall develop a standard contract for a single
3 prime contractor selected under sub. (14) to use and shall include in the contract all
4 of the following:

5 1. A requirement that all subcontractors selected under sub. (13) (a) provide
6 a 100 percent performance bond and a 100 percent payment bond to the benefit of
7 the single prime contractor as the only obligee.

8 2. A delineation of the responsibilities, insurance requirements,
9 indemnification obligations, claims processes, and termination rights and
10 protections of all subcontractors selected under sub. (13) (a).

11 3. A requirement that the single prime contractor is subject to s. 16.528 (2m).

12 4. A schedule for payment from the single prime contractor to a subcontractor
13 that is consistent with sub. (19) (b).

14 (b) Neither a single prime contractor nor a subcontractor selected under sub.
15 (13) (b) may amend a contract developed under par. (a).

16 **SECTION 17.** 16.855^x (19) of the statutes is renumbered 16.855 (19) (a) and
17 amended to read:

18 16.855 (19) (a) As the work progresses under any contract for construction of
19 a project the department, from time to time, shall grant to the contractor an estimate
20 of the amount and proportionate value of the work done, which shall entitle the
21 contractor to receive the amount thereof, less the retainage, from the proper fund.
22 The retainage shall be an amount equal to not more than 5% of the estimate until
23 50% of the work has been completed. At 50% completion, no additional amounts shall
24 be retained, and partial payments shall be made in full to the contractor unless the
25 ~~architect or engineer~~ department certifies that the job is not proceeding

1 satisfactorily. At 50% completion or any time thereafter when the progress of the
2 work is not satisfactory, additional amounts may be retained but in no event shall
3 the total retainage be more than 10% of the value of the work completed. Upon
4 substantial completion of the work, ~~an~~ any amount retained ~~may~~ shall be paid to the
5 contractor, less the value of any required corrective work or uncompleted work. For
6 the purposes of this section, estimates may include any fabricated or manufactured
7 materials and components specified, previously paid for by contractor and delivered
8 to the work or properly stored and suitable for incorporation in the work embraced
9 in the contract.

10 (c) This subsection does not apply to contracts awarded under s. 16.858.

History: 1971 c. 125; 1973 c. 47; 1975 c. 39, 199, 390; 1977 c. 418; 1979 c. 34; 1981 c. 20; 1983 a. 27 ss. 104g to 105, 2202 (1); 1983 a. 390 s. 6; 1985 a. 29; 1985 a. 332 s. 251 (1); 1987 a. 27, 292; 1989 a. 31; 1991 a. 39, 316; 1995 a. 27 ss. 400p, 9126 (19); 1995 a. 227; 1997 a. 27, 306; 1999 a. 150 s. 672; 1999 a. 197; 2001 a. 103; 2003 a. 33, 157; 2005 a. 141, 391; 2007 a. 20 s. 9121 (6) (a); 2009 a. 299; 2011 a. 32; 2011 a. 260 s. 80.

11 **SECTION 18.** 16.855 (19) (b) of the statutes is created to read:

12 16.855 (19) (b) As the work progresses under any subcontract under sub. (14)
13 (d) for construction of a project, the general prime contractor shall, upon request of
14 a subcontractor, pay to the subcontractor an amount equal to the proportionate value
15 of the subcontractor's work done, less retainage. The retainage shall be an amount
16 equal to not more than 5 percent of the subcontractor's work completed until 50
17 percent of the subcontractor's work has been completed. At 50 percent completion,
18 no additional amounts may be retained, and partial payments shall be made in full
19 to the subcontractor unless the department certifies that the subcontractor's work
20 is not proceeding satisfactorily. At 50 percent completion or any time thereafter
21 when the progress of the subcontractor's work is not satisfactory, additional amounts
22 may be retained but the total retainage may not be more than 10 percent of the value
23 of the work completed. Upon substantial completion of the subcontractor's work, any
24 amount retained shall be paid to the subcontractor, less the value of any required

corrective work or uncompleted work. All payments the single prime contractor makes under this paragraph shall be within 7 calendar days after the date on which the single prime contractor receives payment from the department for the work performed.

SECTION 9101. Nonstatutory provisions; Administration.

(1) SINGLE PRIME CONTRACTOR CONTRACT. When the department of administration develops a contract under section 16.855 (14m) (a) of the statutes, as created by this act, the department shall provide public notice of the contract development, accept written comments, and hold at least one public hearing, allowing for testimony. The building commission must approve the contract before the department may use the contract.

SECTION 9301. Initial applicability; Administration.

(1) SINGLE PRIME CONTRACTING. The treatment of sections 13.48 (19) and 16.855 (1), (1g), (2) (a) 5. and 6., (9), (9m), (10m) (am) 3., (13), (14) (a), (am), (b), (bm), (c), and (d), and (14m) of the statutes, the renumbering and amendment of section 16.855 (19) of the statutes, and the creation of section 16.855 (19) (b) of the statutes first apply to bid^s and proposals that are solicited on the effective date of this subsection.

SECTION 9401. Effective dates; Administration.

(1) SINGLE PRIME CONTRACTING. The treatment of sections 13.48 (19) and 16.855 (1), (1g), (2) (a) 5. and 6., (9), (9m), (10m) (am) 3., (13), (14) (a), (am), (b), (bm), (c), and (d), and (14m) of the statutes, the renumbering and amendment of section 16.855 (19) of the statutes, the creation of section 16.855 (19) (b) of the statutes, and SECTION 9301 (1)^{of this act} take effect on January 1, 2014.

(END)

Throughout the draft:

- To be consistent with the rest of the statute, use the term "lowest, qualified, responsible, bidder."
- Replace references to "person" [e.g., s. 16.855(9m)] with "bidder." — *no, persons can be certified who bring a bidder*
- Replace references to "single prime contractor" with "general prime contractor."

Section 3: Modify page 3, line 4 to read "contract with a general prime contractor to perform their division of work."

- To answer the question in your note, if it's necessary to include a definition, single prime contracting is defined as contracting through a process in which only a general prime contractor has a contractual relationship with the state and mechanical, electrical, or plumbing subcontractors selected by the department are subcontractors to the general prime contractor."

Section 4: ~~On page 3, line 13, remove the word "when."~~ — *no, she misunderstood*

Section 6: At the end of line 22 on page 3, after "competency," add "Bidders failing to submit required sworn statements shall be deemed not qualified." *NO RE*

Section 7: After "being bid" on page 5, line 9, add "as well as all other work the bidder is presently under contract to complete."

- Modify the beginning of page 5, line 13 to "in accordance with drawings and specifications."
- At the end of page 5, line 19, add "or on any other agency list for construction related violation of statutes or administrative rules."
- At the end of page 6, line 5, add "or evasion during the previous ten years." Your note about the criteria for responsible bidders and qualified bidders is ok.

Section 9: Modify page 6, line 14 to read "bidding and contracting, the department shall identify and select."

- Modify page 6, lines 15-16 to read "who are responsible and qualified bidders shall be included as part of..." *responsibilities*
- Modify the beginning of line 19 on page 6 to read "shall develop and administer an open and public bidding process." *shall include*

Section 15: Modify the end of line 15 on page 8 and beginning of line 16 to read "at the time it issues the notice to proceed to the successful bidder." *first time referred*

Section 16: At the end this section, please add that when the Building Commission approves an alternative delivery method under s. 13.48(19), a contractor shall use the standard form contract when working with any mechanical, electrical, or plumbing subcontractors.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1022/P1
CMH:sac:rs

DOA:.....Bong, BB0313 - Adopt single prime contracting as the default method of contracting for services

FOR 2013-2015 BUDGET -- NOT READY FOR INTRODUCTION

1 **AN ACT** ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

STATE PROCUREMENT

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 2 **SECTION 1.** 13.48 (19) of the statutes is amended to read:
- 3 13.48 (19) ALTERNATIVES TO STATE CONSTRUCTION. Whenever the building
- 4 commission determines that the use of innovative types of design and construction
- 5 processes will make better use of the resources and technology available in the
- 6 building industry, the building commission may waive any or all of s. 16.855, except

1 s. 16.855 (13) and (14m), if such action is in the best interest of the state and if the
2 waiver is accomplished through formal action of the building commission. The
3 building commission may authorize the lease, lease purchase or acquisition of such
4 facilities constructed in the manner authorized by the building commission. Subject
5 to the requirements of s. 20.924 (1) (i), the building commission may also authorize
6 the lease, lease purchase or acquisition of existing facilities in lieu of state
7 construction of any project enumerated in the authorized state building program.

8 **SECTION 2.** 16.855 (1) of the statutes is renumbered 16.855 (1m) and amended
9 to read:

10 16.855 (1m) The department shall let by contract to the lowest qualified
11 responsible bidder who is a responsible bidder and a qualified bidder all construction
12 work when the estimated construction cost of the project exceeds \$50,000, except for
13 construction work authorized under s. 16.858 and except as provided in sub. (1r) or
14 (10m) or s. 13.48 (19). If factors other than dollar amounts are required to be
15 evaluated for a project, the department shall specify a formula that will convert the
16 other factors into a dollar value for comparison.

17 **(1r)** If a bidder is not a Wisconsin firm and the department determines that the
18 state, foreign nation or subdivision thereof in which the bidder is domiciled grants
19 a preference to bidders domiciled in that state, nation or subdivision in making
20 governmental purchases, the department shall give a preference over that bidder to
21 Wisconsin firms, if any, when awarding the contract, in the absence of compelling
22 reasons to the contrary. The department may enter into agreements with states,
23 foreign nations and subdivisions thereof for the purpose of implementing this
24 subsection.

25 **SECTION 3.** 16.855 (1g) of the statutes is created to read:

1 16.855 (1g) In this section:

2 (a) "Mechanical, electrical, or plumbing subcontractor" is a contractor that
3 performs mechanical, electrical, plumbing, or fire protection work and enters into a
4 contract with a general prime contractor to perform their work.

the contractor of
division of
work

5 (b) "Qualified bidder" means a person that the department certifies under sub.

6 (9m) (b) 1.

7 (c) "Responsible bidder" means a person that the department certifies under

8 sub. (9m) (b) 2.

9 (d) "Single prime contracting" means contracting through a process in which
10 a design professional prepares plans and specifications for the project and the
11 department selects a single contractor to perform and be responsible for the project.

****NOTE: Is this definition accurate?

INS 3-9

12 SECTION 4. 16.855 (2) (a) 5. of the statutes is amended to read:

13 16.855 (2) (a) 5. Date, when and place where plans will be available.

14 SECTION 5. 16.855 (2) (a) 6. of the statutes is created to read:

15 16.855 (2) (a) 6. That the department will consider only bids from persons who
16 are responsible bidders and, unless sub. (9m) (a) 2. applies, qualified bidders.

17 SECTION 6. 16.855 (9) of the statutes is renumbered 16.855 (9m) (b) 1. c. and
18 amended to read:

19 16.855 (9m) (b) 1. c. The If the department may require bidders to submit so
20 requires, the person has submitted a sworn statements statement as to financial
21 ability, equipment, and experience in construction and require such other
22 information as may be necessary to determine their the person's competency.

23 SECTION (7) 16.855 (9m) of the statutes is created to read:

Check A.R. Green

INS
3-23
NOTE

1 16.855 **(9m)** (a) 1. The department shall certify persons as qualified bidders
2 under par. (b) 1. and responsible bidders under par. (b) 2. and shall administer a
3 registration process for all contractors submitting bids on any construction project
4 under this section. The department shall issue, in a timely manner, a certification
5 decision on a complete application for certification. A certification under this
6 subdivision is valid for 2 years except the department may decertify a person if the
7 department determines that the person no longer meets the qualifications under par.
8 (b) and if the department follows a decertification process developed by rule that
9 provides to the person notice, hearing, and a means to appeal.

10 2. Notwithstanding sub. (1m) or (14) (e), the department may waive the
11 condition of certification as a qualified bidder if the project is of such magnitude as
12 to limit competition if the conditions under par. (b) 1. were required.

13 3. The department shall consider for certification under par. (b) associations
14 consisting of at least 2 contracting firms that are organized for the purpose of
15 entering into a construction contract as a single entity if at least one of the
16 contracting firms is qualified under par. (b) and if the assignment of, and provisions
17 for the continuity of, the various responsibilities within the association are agreed
18 upon before the contract is awarded.

19 (b) 1. To be certified as a qualified bidder, a person must meet all of the following
20 conditions:

21 a. The person has completed at least one project that involved similar work to
22 the work being bid and the project was at least 50 percent of the size or value of the
23 division of the project being bid. If the department determines that more experience
24 is necessary for a particular project, the department may include additional
25 requirements in the specifications and certify persons accordingly.

b. The person has access to all necessary equipment and the organizational capacity and technical competence necessary to perform the project work properly and expeditiously.

2. To be certified as a responsible bidder, a person must meet all of the following conditions:

a. The person maintains a permanent place of business.

b. The person submits a sworn statement, upon the department's request, that indicates that the person has adequate financial resources to complete the work being bid. *taking into account any other work the person is currently under contract to complete*

c. The person is bondable for the term of the proposed contract.

d. The person has a record of satisfactorily completing projects. In determining this factor, the department shall consider if the person has completed all contracts in accordance with drawings and specifications; diligently pursued execution of the work and completed contracts according to the time schedule, taking account of extensions granted; fulfilled guarantee requirements of contracts; if the contract included an affirmative action program requirement, complied with the requirement; and, if the contract included a safety program requirement, complied with the requirement.

e. The person is not on an ineligible list that the department maintains under s. 16.705 (9) or 16.765 (9). *ANS 5-19*

****NOTE: If there are other lists that an appearance on would disqualify the person from certification, they should be specifically listed.

f. The person has been in business for at least 12 months.

g. The person is a legal entity and authorized to do business in Wisconsin.

h. The person has performed at least one other public project for a government entity.

i. The person can provide information, upon request, to the department on the person's ownership, management, and control.

j. In any jurisdiction, the person has not been debarred from any government contracts, has not faced discipline under a professional license, or has not been found to have committed tax avoidance or evasion.

in the previous 10 years

***NOTE: Every bidder must be a "responsible bidder," so the requirements in f. to j. are not repeated in the criteria for a "qualified bidder."

SECTION 8. 16.855 (10m) (am) 3. of the statutes is amended to read:

16.855 (10m) (am) 3. The department may award any contract to a minority business or disabled veteran-owned business, or a business that is both a minority business and a disabled veteran-owned business, that if the business is a qualified responsible bidder and a qualified bidder and the business submits a qualified responsible bid that is no more than 5 percent higher than the apparent low bid.

SECTION 9. 16.855 (13) of the statutes is repealed and recreated to read:

16.855 (13) (a) In any project under this section let under single prime contracting, the department shall select, as provided under par. (b), necessary mechanical, electrical, or plumbing subcontractors who are qualified responsible bidders and qualified bidders to be included as part of a general prime contractor who is submitting a bid under sub.

(14).

(b) For purposes of selecting subcontractors under par. (a), the department shall develop and administer an open and public bidding process and follow the requirements and procedures under sub. (2). Within 48 hours of bid submission, the department shall make available on the department Internet site the names of the bidders and the amount of the bid. No more than 7 days after the deadline for bid submission, the department shall provide public notice of the lowest bidders who are qualified

1 bidders and qualified bidders. The department shall make available on its Internet
2 site the bids, including the bid documents, identified under this paragraph as the
3 lowest bidders and they shall be open to public inspection. No other bids may be on
4 the Internet site or open to public inspection.

5 SECTION 10. 16.855 (14) (a) of the statutes is renumbered 16.855 (14) (d) and
6 amended to read:

7 16.855 (14) (d) If a project requires prior approval of the building commission
8 under s. 13.48 (10) (a) and bids are required to be solicited under sub. (2), the
9 department shall take both single bids and separate bids on any division of the work
10 that it designates. If a project does not require prior approval of the building
11 commission under s. 13.48 (10) (a) and bids are required to be solicited under sub.
12 (2), the department may take single bids or separate bids on any division of the work
13 that it designates. If the department awards contracts by the division of work, the
14 department shall award the contracts according to the division of work selected for
15 bidding. Except as provided in sub. (10m) (am), the department shall award all
16 single prime contracts to the lowest bidder who is a qualified bidder and a responsible
17 bidder or bidders that result results in the lowest total construction cost for the
18 project. The department shall make available on its Internet site the final bid results
19 at the same time it issues the award notice to the successful bidder.

20 SECTION 11. 16.855 (14) (am) of the statutes is created to read:

21 16.855 (14) (am) Except as provided in s. 13.48 (19), the department shall let
22 all construction projects that exceed \$185,000 through single prime contracting.

23 SECTION 12. 16.855 (14) (b) of the statutes is repealed.

24 SECTION 13. 16.855 (14) (bm) of the statutes is created to read:

1 16.855 (14) (bm) If the bid is being let through single prime contracting, bidders
2 for the ^{a general} ~~single~~ prime contractor who are qualified bidders ~~and~~ ^{responsible} bidders
3 shall submit their bids to the department no later than 7 days after the successful
4 subcontractor bids become available to the public under sub. (13) (b).

5 ^{create A.R. PINK} SECTION 14. 16.855 (14) (c) of the statutes is created to read:

6 16.855 (14) (c) The department shall reject any bid ^{for the general} ~~from a single~~ prime
7 contractor ^{from a bidder} who submits a bid that includes contractors other than the ones selected
8 under sub. (13) (a).

9 ^e SECTION 15. 16.855 (14) (d) [✓] of the statutes is created to read:

10 16.855 (14) (d) ^e Within 30 days after the deadline under par. (bm), the
11 department shall notify the successful ^{general} ~~single~~ prime contractor bidder of its selection.
12 The contractor who is awarded the contract shall enter into contracts with the
13 mechanical, electrical, or plumbing subcontractors selected under par. (13) (a) and
14 shall comply with the requirements under sub. (14m). The department shall make
15 the final bid results available on its Internet site at the time it issues the notice to
16 the successful bidder. ^{general prime contractor}

17 ^{INS 8-17 NOTE} SECTION 16. 16.855 (14m) of the statutes is created to read:

18 ^{create A.R. MAUVE} 16.855 (14m) (a) The department shall develop a standard contract for a ^{general} ~~single~~
19 prime contractor selected under sub. (14) to use and shall include in the contract all
20 of the following:

21 1. A requirement that all subcontractors selected under sub. (13) (a) provide
22 a 100 percent performance bond and a 100 percent payment bond to the benefit of
23 the ^{general} ~~single~~ prime contractor as the only obligee.

2. A delineation of the responsibilities, insurance requirements, indemnification obligations, claims processes, and termination rights and protections of all subcontractors selected under sub. (13) (a).

3. A requirement that the ~~single~~^{general} prime contractor is subject to s. 16.528 (2m).

4. A schedule for payment from the ~~single~~^{general} prime contractor to a subcontractor that is consistent with sub. (19) (b).

(b) Neither a ~~single~~^{general} prime contractor nor a subcontractor selected under sub. (13) (b) may amend a contract developed under par. (a).

SECTION 17. 16.855 (19) of the statutes is renumbered 16.855 (19) (a) and amended to read:

16.855 (19) (a) As the work progresses under any contract for construction of a project the department, from time to time, shall grant to the contractor an estimate of the amount and proportionate value of the work done, which shall entitle the contractor to receive the amount thereof, less the retainage, from the proper fund. The retainage shall be an amount equal to not more than 5% of the estimate until 50% of the work has been completed. At 50% completion, no additional amounts shall be retained, and partial payments shall be made in full to the contractor unless the ~~architect or engineer~~ department certifies that the job is not proceeding satisfactorily. At 50% completion or any time thereafter when the progress of the work is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than 10% of the value of the work completed. Upon substantial completion of the work, ~~an any amount retained may~~ shall be paid to the contractor, less the value of any required corrective work or uncompleted work. For the purposes of this section, estimates may include any fabricated or manufactured materials and components specified, previously paid for by contractor and delivered

WS

9-9

NOTE

1 to the work or properly stored and suitable for incorporation in the work embraced
2 in the contract.

3 (c) This subsection does not apply to contracts awarded under s. 16.858.

4 SECTION 18. 16.855 (19) (b) of the statutes[✓] is created to read:

5 16.855 (19) (b) As the work progresses under any subcontract under sub. (14)
6 (d) for construction of a project, the general prime contractor shall, upon request of
7 a subcontractor, pay to the subcontractor an amount equal to the proportionate value
8 of the subcontractor's work done, less retainage. The retainage shall be an amount
9 equal to not more than 5 percent of the subcontractor's work completed until 50
10 percent of the subcontractor's work has been completed. At 50 percent completion,
11 no additional amounts may be retained, and partial payments shall be made in full
12 to the subcontractor unless the department certifies that the subcontractor's work
13 is not proceeding satisfactorily. At 50 percent completion or any time thereafter
14 when the progress of the subcontractor's work is not satisfactory, additional amounts
15 may be retained but the total retainage may not be more than 10 percent of the value
16 of the work completed. Upon substantial completion of the subcontractor's work, any
17 amount retained shall be paid to the subcontractor, less the value of any required
18 corrective work or uncompleted work. All payments the ^{general} ~~single~~ prime contractor
19 makes under this paragraph shall be within 7 calendar days after the date on which
20 the ^{general} ~~single~~ prime contractor receives payment from the department for the work
21 performed.

22 SECTION 9101. Nonstatutory provisions; Administration.

23 (1) ^{General} ~~SINGLE~~ PRIME CONTRACTOR CONTRACT. When the department of
24 administration develops a contract under section 16.855 (14m) (a) of the statutes, as
25 created by this act, the department shall provide public notice of the contract

1 development, accept written comments, and hold at least one public hearing,
2 allowing for testimony. The building commission must approve the contract before
3 the department may use the contract.

4 **SECTION 9301. Initial applicability; Administration.**

5 (1) SINGLE PRIME CONTRACTING. The treatment of sections 13.48 (19) and 16.855
6 (1), (1g), (2) (a) 5. and 6., (9), (9m), (10m) (am) 3., (13), ^{and} (14) (a), (am), (b), (bm), (c), and
7 ^e (d), and (14m) of the statutes, the renumbering and amendment of section 16.855 (19)
8 of the statutes, and the creation of section 16.855 (19) (b) of the statutes first apply
9 to bids and proposals that are solicited on the effective date of this subsection.

10 **SECTION 9401. Effective dates; Administration.**

11 (1) SINGLE PRIME CONTRACTING. The treatment of sections 13.48 (19) and 16.855
12 (1), (1g), (2) (a) 5. and 6., (9), (9m), (10m) (am) 3., (13), ^{and} (14) (a), (am), (b), (bm), (c), and
13 ^e (d), and (14m) of the statutes, the renumbering and amendment of section 16.855 (19)
14 of the statutes, the creation of section 16.855 (19) (b) of the statutes, and SECTION
15 9301 (1) of this act take effect on January 1, 2014.

16

(END)

INS
11-14
NOTE

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1022/p2ins
CMH:.....

1 Insert A

Under current law, with some exceptions, DOA must let by contract to the lowest qualified responsible bidder all construction work when the estimated construction cost of the project exceeds \$50,000 or, if the estimated cost is less, when contracting is in the best interest of the state. This bill requires DOA, for any project that has an estimated construction cost that exceeds \$185,000, to let the project to the lowest qualified responsible bidder through single prime contracting. "Single prime contracting" is a process in which DOA selects all mechanical, electrical, and plumbing contractors, but contracts only with a general prime contractor, who then must contract with the selected mechanical, electrical, and plumbing contractors. This bill also requires DOA to certify persons as qualified and responsible and provides criteria for such certification.

2

3 Insert 3-7

4 (c) "Qualified responsible bidder" means a person who is a qualified bidder and
5 who is a responsible bidder.

6

7 Insert 3-9 (no paragraph)

8 no ~~§~~ only a general prime contractor has a contractual relationship with the state
9 and all mechanical, electrical, or plumbing subcontractors are selected by
10 department and are subcontractors to the general prime contractor.

11

12 Insert 3-23 NOTE

****NOTE: I did not add "Bidders failing to submit required sworn statements shall be deemed not qualified." to this provision. The introduction to this provision (see in SECTION), the (b) 1. introduction, already states that certification as "qualified" hinges upon submission of the statement if DOA requires the statement so the addition would be redundant (and possibly confusing since there are other requirements under that subdivision that would not have this language).

use
AR green
(pg. 3)

13

14 Insert 5-19 (no paragraph)

no \$

or on a list that another agency maintains for persons who violated construction-related statutes or administrative rules

Insert 6-6 NOTE

****NOTE: Please review this subdivision paragraph. I think that you wanted the 10-year lookback to apply only to tax avoidance or evasion. If you want the lookback to include debarment or discipline, I will move it.

Insert 6-12 NOTE

****NOTE: I struck from current law "qualified responsible" from the term "qualified responsible bid." It seems to me that you want the bidder to be "qualified and responsible" and I am not sure what a "qualified responsible bid" would be (especially given the new certification standards created in this bill). Please let me know if you disagree.

created
man/s. 16.855 -
(14) (c)

Insert 6-18 NOTE

****NOTE: I combined qualified and responsible (including in the definitions). But I did not understand the suggestion to add "identify and" to "select." I am not sure how DOA would select without identifying and we try to avoid redundancies or superfluous words in the statutes. I added that general prime contractors bids must include these successful subcontractor bidders, but I do not think the language is necessary since DOA may not select a general subcontractor whose bid does not include these subcontractors (see SECTION).

AR PINK (PS-8)

Insert 8-17 NOTE

****NOTE: I added "general prime contractor" before "bidder" for clarification. I did not add "notice to proceed" because that is nowhere else in this statute. If you prefer to call the award to the general prime contractor a "notice to proceed," we should do that consistently throughout the statute to avoid confusion. Please let me know if you prefer that so I can redraft.

Insert 9-9 NOTE

****NOTE: I did not add the suggested material to this section because I already added it to s. 13.48 (19). Since it substantively applies to that section, I thought it made more sense there. Please review that section.

1

Insert 11-16 NOTE

✕ ****NOTE: I removed from the delayed effective date the requirement that DOA develop a standard contract (s. 16.855 (14) (m); SECTION of this draft). If all of the other sections are to take effect then, I think DOA may want to develop the contract and hold the public hearings before the delayed effective date. Please let me know if I am misunderstanding the intent.

(14m)

AR
MAUVE
(pr 8)